

Prior Written Notice and Meeting Notice in Special Education

A Primer for Educators

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Regulations

The provision of prior written notice to parents is an important procedural safeguard afforded by the Individuals with Disabilities Education Act (IDEA) and the regulations in 34 CFR 300. This document provides an explanation of prior written notice and the meeting notice in the special education process. The following are the relevant regulations as they relate to the notice requirements:

ARSD 24:05:25:16. Parent participation. Each district shall take steps to ensure that one or both parents of the child are present at each IEP team meeting or are afforded the opportunity to participate. The district shall notify parents of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually agreed-upon time and place. The notice to the parents shall state the purpose, time, and location of the IEP team meeting and who will be in attendance and inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child, including information related to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the IDEA.

If a purpose of the IEP team meeting is the consideration of postsecondary goals and transition services for a student, the notice must also address the provisions of § 24:05:25:16.01.

If parents cannot attend, the district shall use other methods to ensure participation, including individual or conference telephone calls consistent with § 24:05:27:08.04

ARSD 24:05:30:04. Prior notice. Written notice which meets the requirements of § 24:05:30:05 must be given to the parents five days before the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. The five-day notice requirement may be waived by the parents.

ARSD 24:05:30:05. Content of notice.

The notice must include the following:

- (1) A description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action, and a description of any other options the IEP team considered and the reasons why those options were rejected;
- (2) A description of each evaluation procedure, assessment, record, or report that the district uses as a basis for the proposal or refusal;
- (3) A description of any other factors which are relevant to the district's proposal or refusal;
- (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this article and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

- (5) Sources for parents to contact to obtain assistance in understanding the provisions of this article.

ARSD 24:05:30:06. Form of notice.

The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the local education agency shall take steps to ensure that the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication, that the parent understands the content of the notice, and that there is written evidence that the requirements in this section have been met.

ARSD 24:05:30:06.01. Procedural safeguards notice -- Availability.

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy must also be given to the parent:

- (1) Upon initial referral or parental request for evaluation;
- (2) Upon request by a parent;
- (3) In accordance with the discipline procedures in chapters w24:05:06 and 24:05:06.01; and
- (4) Upon receipt of the first state complaint under chapter 24:05:15 and first due process complaint under this chapter in a school year.

A district may place a current copy of the procedural safeguards notice on its internet website if a website exists.

ARSD 24:05:30:06.02. Procedural safeguards notice -- Contents.

The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this article and the state complaint procedures relating to:

- (1) Independent educational evaluation;
- (2) Prior written notice;
- (3) Parental consent;
- (4) Access to educational records;
- (5) Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
 - (a) The time period in which to file a complaint;
 - (b) The opportunity for the district to resolve the complaint; and
 - (c) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- (6) The child's placement during pendency of any due process complaint;
- (7) Procedures for students who are subject to placement in an interim alternative educational setting;
- (8) Requirements for unilateral placement by parents of children in private schools at public expense;
- (9) The availability of mediation;
- (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- (11) Civil actions, including the time period in which to file those actions; and
- (12) Attorneys' fees.

The form of the notice must be consistent with § 24:05:30:06, including written evidence that the requirements in this section have been met.



Questions and Answers



1. What is the “prior notice” requirement all about? And why and when do we have to provide it?

The prior notice requirement, which has been in effect since passage of P.L. 94-142 in 1975, is intended to insure full involvement of parents in educational decision making about their child. This means involvement of the parent, through prior written notice, any time the school or educational agency proposes, or refuses, to change the student’s identification, evaluation, placement, or provision of a free appropriate public education.

2. What are the most typical circumstances under which prior notice is required?

- Before initial evaluations.
- Before reevaluations, as considered every three years or more frequently if conditions warrant, or if the child’s parents or teacher requests a reevaluation.
- Before initially placing a child in any program for special education services.
- Before making a change in placement (e.g., in services specified in the IEP, such as adaptive P.E., speech therapy, amount of resource time provided, or for expulsion or long-term suspensions sufficient to constitute a change in placement).
- When proposing to initiate or change the identification of child.
- Before terminating a child from special education services.
- When refusing a parental request to initiate or change the identification, evaluation, or placement of a child.
- Before a change in the student’s long-term goals and/or short-term objectives that will constitute a change in the provision of a free appropriate public education (FAPE).
- Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice.

3. Is prior notice required when a school conducts screening with all children in a school, grade, or class?

No. The screenings are administered to all children, and procedures are used with all children in a school, grade, or class and do not require written notice.

4. Is the school required to provide written prior notice before (a) an IEP meeting, or (b) any change in an IEP, or does written documentation of a phone call meet the prior notice requirement?

Parent notification *to set the time for an IEP meeting* may be oral, written, or both, but must indicate the purpose, time and location of the meeting and who will be in attendance, and that they may bring others to the meeting. Importantly, a record of the efforts to contact parents must be maintained. The school must *document* that the above information listed is provided to the parent when contacted. The document recommended by Special Education Programs contains the prior written notice content requirements and the meeting notice requirements.

- 5. Is it necessary to send all prior written notices by certified or registered mail or to deliver them in person?**

No. But utilizing certified or registered mail may be a good practice in certain situations.

- 6. Is it necessary to provide prior written notice when conducting the reevaluation that is required to be completed every three years?**

Yes. The purpose of the reevaluation is to determine whether a child has a disability and continues to need special education, as well as to determine the nature and extent of special education services required.

- 7. Is prior notice required when changing the special education services that are specified on the child's IEP (e.g., physical therapy, time in resource room, adaptive physical education, and self-contained classroom)?**

Yes. Whenever a change is suggested from what was agreed to on the IEP, prior written notice is necessary. The district and the parent may agree not to convene an IEP meeting for the purposes of making a change to the IEP. Prior written notice and a copy of the amendment document or the amended IEP must be sent to the parents.

- 8. Is prior written notice required for a change in a child's long-term goals and/or short-term objectives?**

Yes. Any changes to the IEP require prior written notice.

- 9. Is prior written notice required when exiting a child from special education services?**

Yes. Exiting constitutes a change of placement.

- 10. Is prior written notice required when a child graduates?**

Yes. Graduation has been defined as a change of placement and requires prior written notice.

- 11. Must prior written notice be provided to educational surrogate parents assigned to represent a child?**

Yes. Educational surrogate parents must be provided prior written notice as they serve in the place of a child's parents for educational purposes.

- 12. What is the purpose of providing a notice of meetings to be held regarding development of an Individualized Education Program (IEP)?**

IDEA indicates that the school will take steps to ensure that one or both of the parents of a child with a disability are present at each meeting or are afforded the opportunity to participate, including — (a) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and (b) scheduling the meeting at a mutually agreed on time and place.

13. What elements must be included in the meeting notices?

There is a difference between the meeting notice and written prior notice. The *meeting notice* simply informs the parent of the purpose, time, and place for a meeting regarding their child. *Written prior notice* informs the parent of why the school is proposing or refusing to make a change.

Notices to parents regarding meetings that are held to develop or revise the IEPs for children with disabilities must indicate the purpose, the time, and the location of the meeting, as well as information regarding who will be in attendance. The notice must also inform parents that they may bring other people to the meeting should they choose to do so. If transition is to be discussed at the meeting, this information must also be provided to the parent in the notice in addition to the information that the child will be invited to attend the meeting. Again, the document recommended by Special Education Programs contains the prior written notice content requirements and the meeting notice requirements.



Documentation of Attempts



Written notice must be given to the parents of a child with a disability in a reasonable time (5 days) before the school proposes to initiate or refuses to initiate a change in regards to the identification, evaluation, educational placement, or provision of a free appropriate public education.

If a parent does not respond to a prior written notice, federal guidelines require the school to provide several attempts of prior written notice to parents.

The following methods of documentation will satisfy this requirement:

1. Multiple prior written notices sent to the parent through mail.
2. The prior written notice mailed and followed with a telephone call. The telephone call should be documented on the most current prior written notice or on a telephone log.
3. Mailed prior written notice followed by a note or letter sent home with the child. Keep a copy of the note as documentation.
4. Mailed prior written notice, followed by a visit to the home. Document your contact on the most recent prior written notice.
5. Prior written notice sent by certified or registered mail. Keep the receipt for documentation.
6. If you see the parent in the community, an oral notice would be appropriate if it is preceded or followed by a written notice, document your contact.

PARENTAL PRIOR WRITTEN NOTICE

SCHOOL DISTRICT:

DATE SENT:

STUDENT NAME:

PURPOSE OF THIS NOTIFICATION

This notice is being provided to you for the following reason(s): (Check all that apply)

- | | |
|--------------------------|--|
| <input type="checkbox"/> | Referral for an evaluation |
| <input type="checkbox"/> | Evaluation of your student's special education and/or related service needs |
| <input type="checkbox"/> | A discussion of your student's evaluation results |
| <input type="checkbox"/> | Determination of your student's eligibility for special education or special education and related services |
| <input type="checkbox"/> | Reevaluation of your student's continued need for special education or special education and related services |
| <input type="checkbox"/> | Development of an Individualized Education Program for your student |
| <input type="checkbox"/> | Determination of the educational placement for your student |
| <input type="checkbox"/> | Amendment of your student's Individualized Education Program |
| <input type="checkbox"/> | A change in the special education or special education and related services now being provided to your student |
| <input type="checkbox"/> | Planning for a transition to adulthood program as part of your student's Individualized Education Program |
| <input type="checkbox"/> | Other issues, specifically: |

☐ For the reason(s) noted above, the district proposes to initiate/change the following course of action:

☐ For the reason(s) noted above, the school district is declining to initiate/change the following course of action:

The reason(s) why this course of action is being proposed or declined: _____

The following options and programs were considered by the district and for the reasons noted here, they were rejected:

The following school district reports, observations, records, academic tests, evaluations, or developmental screening activities provide the basis for the school district's decision. Also listed here are the types of assessments or reports the district proposes to use to determine your child's eligibility/continuing eligibility for special education or the appropriate educational program for your student:

Noted below are other factors which relate directly to the actions the district plans to take or actions the district declines to take. _____

☐ Please sign, date and return this consent for evaluation/reevaluation form.

CONSENT FOR EVALUATION OR REEVALUATION

ARSD 24:05:13:01. Consent. "Consent" means that the parents have been fully informed of all information relevant to the activity for which consent is sought, in the native language, or other mode of communication; the parents understand and agree in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists any records which will be released and to whom; and the granting of consent by the parent is voluntary and may be revoked in writing at any time.

Parent Signature: _____ Date signed: _____

At the school district's request and for reasons which I agree to, I am willing to extend the 25 school day timeline for the completion of all my student's assessments to: _____ (Date) _____ (Initials)

PROPOSED MEETING ARRANGEMENTS

We will be meeting as an team to discuss your student's educational program on the following date and time:

Date - _____ **Time -** _____. We will be meeting at the following **Location:**

_____. We have invited the following people to be present at this team meeting:

If the purpose of our meeting is the consideration of transition to adulthood services for your student, we will be inviting _____ (student) to attend the meeting. Representatives from the following agencies will also be invited to attend this meeting:

Parents may invite other individuals who have knowledge or special expertise regarding their child, including related services personnel as appropriate.

I wish to hold this meeting as soon as possible and want to waive the mandatory 5 day prior notice requirement:
(Parent's initials) _____ (Date) _____

CONSENT TO EXCUSE TEAM MEMBER

ARSD 24:05:13:01. Consent. "Consent" means that the parents have been fully informed of all information relevant to the activity for which consent is sought, in the native language, or other mode of communication; the parents understand and agree in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists any records which will be released and to whom; and the granting of consent by the parent is voluntary and may be revoked in writing at any time.

Parent Signature: _____ Date signed: _____

Parents and school district agree to excuse the following team member/s attendance at the IEP meeting. If required, any excused team member will provide written input to be used to develop the IEP. List excused team member/members below:

Excused Member	Curriculum or Related Service Area	Excusal Approved	Written Input Received

If these arrangements are not convenient for you, please call us at the number listed below.

Please call _____ **at telephone number** _____
between the hours of _____ **and** _____ **if you have questions or concerns.**

If you need assistance with the completion of this form or to understand the meaning of this form and its contents, please contact the person noted above at the phone number provided. The information provided on this form will remain confidential.

This parental notice/consent form was received by the district on: _____ (Date)

Upon request parents may receive a copy of the procedural safeguards.